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10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13

14 BENIGNO BACOLORES, on behalf of
himself and all others similarly situated,

15 Plaintiff,

16 v.

17 FOUR SEASONS HOTELS LIMITED,
18 a Canadian company doing business in
California, and Does 1-100, inclusive,

19 Defendant.
20
21

CASE NO. C-07-05592 MHP

(San Francisco Superior Court Case No.
CGC-07-467485)

**DEFENDANT FOUR SEASONS
HOTELS LIMITED'S ANSWER TO
PLAINTIFF'S CLASS ACTION
COMPLAINT, AND DEMAND FOR
JURY TRIAL**

Class Action Fairness Act

Action Filed September 21, 2007

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1 Pursuant to Rule 8(b) through (f) of the *Federal Rules of Civil Procedure*,
2 Defendant Four Seasons Hotels Limited, by and through its attorneys of record,
3 hereby answer the Class Action Complaint (hereinafter "Complaint") filed by
4 Plaintiff Benigno Bacolores, and those others Plaintiff purports to represent, as
5 follows:

6
7 1. Defendant denies the allegations of Paragraph 1 of the Complaint.

8 2. Defendant denies the allegations of Paragraph 2 of the Complaint.

9 3. Defendant denies the allegations of Paragraph 3 of the Complaint.

10 4. Defendant denies the allegations of Paragraph 4 of the Complaint.

11 5. Defendant admits that Plaintiff purports to bring this action under the
12 statutes cited in Paragraph 5 of the Complaint. Defendant denies any liability to
13 Plaintiff and further denies the remaining allegations of Paragraph 5 of the
14 Complaint.

15 6. Defendant admits that Plaintiff purports to bring this action under the
16 statutes cited in Paragraph 6 of the Complaint. Defendant denies any liability to
17 Plaintiff and further denies the remaining allegations of Paragraph 6 of the
18 Complaint.

19 7. Defendant denies that it owns upscale hotels in Los Angeles County,
20 San Diego County, San Francisco County, Santa Barbara County, and Santa Clara
21 County, California, as alleged in Paragraph 7 of the Complaint. Defendant denies
22 that Plaintiff worked for Defendant as a server during the dates listed in Paragraph 7
23 of the Complaint. Defendant admits the remaining allegations set forth in Paragraph
24 7 of the Complaint.

25 8. Defendant lacks knowledge or information sufficient to form a belief as
26 to the truth of the allegations of Paragraph 8 of the Complaint.

27 9. Defendant denies that it is engaged in the ownership of a chain of
28 upscale hotels located throughout California. Defendant further denies that it

1 committed the acts complained of in the Complaint in California and throughout Los
2 Angeles County. Defendant denies that Plaintiff and others similarly situated were
3 non-exempt employees under the California Wage and Hour Law. Defendant denies
4 that Defendant employed Plaintiff and similarly situated persons as alleged in
5 Paragraph 9 of the Complaint. Defendant admits the remaining allegations of
6 Paragraph 9 of the Complaint.

7 10. Defendant lacks knowledge or information sufficient to form a belief as
8 to the truth of the allegations of Paragraph 10 of the Complaint.

9 11. Defendant denies the allegations of Paragraph 11 of the Complaint.

10 12. Defendant admits that it conducted business in various hotels in Los
11 Angeles and elsewhere in California. Defendant denies the remaining allegations of
12 Paragraph 12 of the Complaint.

13 13. Defendant denies the allegations of Paragraph 13 of the Complaint.

14 14. Defendant denies the allegations of Paragraph 14 of the Complaint.

15 15. Defendant denies the allegations of Paragraph 15 of the Complaint.

16 16. Defendant denies the allegations of Paragraph 16 of the Complaint.

17 17. Defendant denies the allegations of Paragraph 17 of the Complaint.

18 18. Defendant denies the allegations of Paragraph 18 of the Complaint.

19 19. Defendant denies the allegations of Paragraph 19 of the Complaint.

20 20. Defendant denies the allegations of Paragraph 20 of the Complaint.

21 21. Defendant denies the allegations of Paragraph 21 of the Complaint.

22 22. Defendant denies the allegations of Paragraph 22 of the Complaint.

23 23. Defendant denies the allegations of Paragraph 23 of the Complaint.

24
25 **CLASS ACTION ALLEGATIONS**

26 24. Defendant admits that Plaintiff purports to represent a class of persons
27 as alleged in Paragraph 24 of the Complaint. Defendant denies that the purported
28 class meets the requirements of *Federal Rule of Civil Procedure* 23 or California

1 *Code of Civil Procedure* section 382, and further denies the remaining allegations of
2 Paragraph 24 of the Complaint.

3 25. Defendant admits that Plaintiff purports to represent a subclass of
4 persons as alleged in Paragraph 25 of the Complaint. Defendant denies that the
5 purported subclass meets the requirements of *Federal Rule of Civil Procedure* 23 or
6 California *Code of Civil Procedure* section 382, and further denies the remaining
7 allegations of Paragraph 25 of the Complaint.

8 26. Defendant admits that Plaintiff purports to represent a subclass of
9 persons as alleged in Paragraph 26 of the Complaint. Defendant denies that the
10 purported subclass meets the requirements of *Federal Rule of Civil Procedure* 23 or
11 California *Code of Civil Procedure* section 382, and further denies the remaining
12 allegations of Paragraph 26 of the Complaint.

13 27. Defendant admits that Plaintiff purports to represent a subclass of
14 persons as alleged in Paragraph 27 of the Complaint. Defendant denies that the
15 purported subclass meets the requirements of *Federal Rule of Civil Procedure* 23 or
16 California *Code of Civil Procedure* section 382, and further denies the remaining
17 allegations of Paragraph 27 of the Complaint.

18 28. Defendant lacks knowledge or information sufficient to form a belief as
19 to the truth of the allegations of Paragraph 28 of the Complaint.

20 29. Paragraph 29 of the Complaint sets forth a legal conclusion to which no
21 answer is required and is accordingly denied.

22 30. Paragraph 30 of the Complaint sets forth a legal conclusion to which no
23 answer is required and is accordingly denied.

24 31. Paragraph 31 of the Complaint sets forth a legal conclusion that joinder
25 of all members of the proposed class is not practicable, to which no answer is
26 required and is accordingly denied. Defendant lacks knowledge or information
27 sufficient to form a belief as to the truth of the remaining allegations of Paragraph
28 31 of the Complaint.

1 32. Paragraph 32 of the Complaint, and each of its subparagraphs, sets
2 forth legal conclusions to which no answer is required and is accordingly denied.

3 33. Paragraph 33 of the Complaint sets forth a legal conclusion to which no
4 answer is required and is accordingly denied.

5 34. Paragraph 34 of the Complaint sets forth a legal conclusion to which no
6 answer is required and is accordingly denied.

7 35. Paragraph 35 of the Complaint sets forth a legal conclusion to which no
8 answer is required and is accordingly denied.

9 36. Paragraph 36 of the Complaint sets forth a legal conclusion to which no
10 answer is required and is accordingly denied.

11
12 **FIRST CAUSE OF ACTION**

13 (Failure to Pay Wages)

14 38. Defendant denies the allegations of Paragraph 38 of the Complaint.

15 39. Defendant denies the allegations of Paragraph 39 of the Complaint.

16 40. Defendant denies the allegations of Paragraph 40 of the Complaint.

17 41. Defendant denies the allegations of Paragraph 41 of the Complaint.

18
19 **SECOND CAUSE OF ACTION**

20 (Failure to Provide Rest Periods or Compensation in Lieu Thereof)

21 43. Defendant denies the allegations of Paragraph 43 of the Complaint.

22 44. Defendant denies the allegations of Paragraph 44 of the Complaint.

23
24 **THIRD CAUSE OF ACTION**

25 (Failure to Provide Meal Periods or Compensation in Lieu Thereof)

26 46. Defendant denies the allegations of Paragraph 46 of the Complaint.

27 47. Defendant denies the allegations of Paragraph 47 of the Complaint.

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FOURTH CAUSE OF ACTION

(Failure to Timely Pay Wages Due at Termination)

49. Defendant denies the allegations of Paragraph 49 of the Complaint.
50. Defendant denies the allegations of Paragraph 50 of the Complaint.
51. Defendant denies the allegations of Paragraph 51 of the Complaint.
52. Defendant denies the allegations of Paragraph 52 of the Complaint.
53. Defendant denies the allegations of Paragraph 53 of the Complaint.

FIFTH CAUSE OF ACTION

(Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement Provisions)

55. Defendant denies the allegations of Paragraph 55 of the Complaint.
56. Defendant denies the allegations of Paragraph 56 of the Complaint.
57. Defendant admits the allegations of Paragraph 57 of the Complaint.
58. Defendant denies the allegations of Paragraph 58 of the Complaint.

SIXTH CAUSE OF ACTION

(Violation of Unfair Competition Law)

60. Defendant denies the allegations of Paragraph 60 of the Complaint, including each of its subparagraphs.

61. Defendant denies the allegations of Paragraph 61 of the Complaint.
62. Defendant denies the allegations of Paragraph 62 of the Complaint.
63. Defendant denies the allegations of Paragraph 63 of the Complaint.
64. Defendant denies the allegations of Paragraph 64 of the Complaint.
65. Defendant denies the allegations of Paragraph 65 of the Complaint.
66. Defendant denies the allegations of Paragraph 66 of the Complaint.
- 66A. Defendant denies that Plaintiff is entitled to any relief whatever, including that requested in the prayer for relief that follows Paragraph 66 of the

1 Complaint.

2
3 **FIRST AFFIRMATIVE DEFENSE**

4 The Complaint, and each purported cause of action alleged therein, fails to
5 state facts sufficient to constitute a cause of action.

6
7 **SECOND AFFIRMATIVE DEFENSE**

8 Plaintiff's claims and the claims of the putative class are barred because
9 during all relevant periods Plaintiff and the putative class members were employed
10 in a capacity exempt from the statutory requirements imposed by California Wage
11 and Hour Law.

12
13 **THIRD AFFIRMATIVE DEFENSE**

14 Plaintiff's claims, or the claims he may seek to assert on behalf of others, are
15 barred by the applicable statute of limitations including, but not limited to,
16 California *Code of Civil Procedure* sections 337, 338, 339, 340, 343, and California
17 *Business and Professions Code* section 17208.

18
19 **FOURTH AFFIRMATIVE DEFENSE**

20 Any and all actions taken by Defendant concerning or affecting Plaintiff or
21 the putative class were undertaken in good faith, on reasonable grounds, and were
22 entirely justified, proper, and lawful.

23
24 **FIFTH AFFIRMATIVE DEFENSE**

25 Defendant acted reasonably and in reliance upon written administrative
26 regulations, orders, or rulings to assure full compliance with all applicable
27 requirements of California state law relative to compensation paid to Plaintiff and
28 members of the putative class.

1 **SIXTH AFFIRMATIVE DEFENSE**

2 Plaintiff's claims and the claims of the putative class are barred by the
3 doctrines of waiver, estoppel, laches, unclean hands, and release.

4
5 **SEVENTH AFFIRMATIVE DEFENSE**

6 Plaintiff's injuries and the injuries of the putative class members, if any, were
7 not proximately caused by any unlawful policy, custom, practice, and/or procedure
8 promulgated and/or tolerated by Defendant.

9
10 **EIGHTH AFFIRMATIVE DEFENSE**

11 Plaintiff and the members of the putative class consented to, encouraged, or
12 voluntarily participated in all actions taken, if any.

13
14 **NINTH AFFIRMATIVE DEFENSE**

15 Plaintiff's failure and the failure of the putative class members to take meal
16 breaks and/or rest breaks was the result of their exercise of discretion and
17 independent judgment.

18
19 **TENTH AFFIRMATIVE DEFENSE**

20 Defendant alleges that each purported cause of action in the complaint is
21 barred, or recovery should be reduced, pursuant to the doctrine of avoidable
22 consequences.

23
24 **ELEVENTH AFFIRMATIVE DEFENSE**

25 Defendant alleges that the claims alleged by Plaintiff and the putative class
26 are barred because, without admitting that Defendant owed any duties or obligations
27 to Plaintiff or the members of the putative class, such duties or obligations have
28 been fully performed, satisfied or discharged.

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 Defendant alleges that the Complaint fails to properly state a claim for
3 penalties under California *Labor Code* section 203 because there is a bona fide,
4 good faith dispute with respect to Defendant's obligation to pay any wages that may
5 be found to be due.

6
7 **THIRTEENTH AFFIRMATIVE DEFENSE**

8 Defendant alleges that the Complaint and each cause of action set forth
9 therein cannot be maintained against Defendant because the principles of equity and
10 fairness operate to bar the imposition of penalties under California *Labor Code*
11 sections 203, 226, and 226.7.

12
13 **FOURTEENTH AFFIRMATIVE DEFENSE**

14 Defendant alleges that there must be excluded from the calculation of any
15 waiting time wages which may be found owed to Plaintiff or the putative class
16 members (which Defendant denies) those aspects of the employees' compensation
17 that are excluded from the regular rate of pay.

18
19 **FIFTEENTH AFFIRMATIVE DEFENSE**

20 Defendant alleges that there must be an offset from the calculation of any
21 wages which may be found owed to Plaintiff or the putative class members (which
22 Defendant denies) based upon the value of the meals provided to Plaintiff and the
23 putative class members by Defendant during regular working hours.

24
25 **SIXTEENTH AFFIRMATIVE DEFENSE**

26 Any unlawful or wrongful acts of any person(s) employed by Defendant were
27 outside the scope of his or her authority and such act(s), if any, were not authorized,
28 ratified, or condoned by Defendant, nor did Defendant know or have reason to be

1 aware of such alleged conduct.

2
3 **SEVENTEENTH AFFIRMATIVE DEFENSE**

4 Any loss or damages sustained by Plaintiff or the members of the putative
5 class, if any, were caused by the acts or omissions of Plaintiff or persons other than
6 Defendant.

7
8 **EIGHTEENTH AFFIRMATIVE DEFENSE**

9 Even if Plaintiff or the putative class members could establish a claim for
10 damages, Plaintiff and the putative class members failed, refused, and/or neglected
11 to mitigate such damages complained of in the Complaint, if any.

12
13 **NINETEENTH AFFIRMATIVE DEFENSE**

14 Plaintiff's claim and the claims of the members of the putative class fail
15 because they, and each of them, have been fully compensated for any wages owed
16 and have effected an accord and satisfaction of their claims.

17
18 **TWENTIETH AFFIRMATIVE DEFENSE**

19 Some or all of the members of the putative class have waived their right to
20 relief pursuant to the doctrine of accord and satisfaction and are otherwise estopped
21 from asserting such claims.

22
23 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

24 The Complaint is barred because any recovery from Defendant would result
25 in unjust enrichment.

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1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

2 Defendant is entitled to a set-off with respect to Plaintiff and the putative
3 class members for monies paid for any hours that Plaintiff or a member of the
4 putative class was not working.

5
6 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

7 Defendant is entitled to a set-off with respect to Plaintiff and members of the
8 putative class for net overpayments made to Plaintiff or members of the putative
9 class due to rounding of time records.

10
11 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

12 Defendant had neither actual nor constructive knowledge that Plaintiff or the
13 putative class members were suffered or permitted to work during hours for which
14 they allegedly did not receive overtime compensation.

15
16 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

17 Defendant was not Plaintiff's or the putative class members' employer as
18 defined under either Federal or California law; therefore, no judgment can be levied
19 against Defendant for the claims asserted in the Complaint.

20
21 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

22 Plaintiff and the members of the putative class have failed to exhaust the
23 requisite administrative, statutory, and/or contractual remedies available to them
24 prior to commencing this action, including submitting their claims to mandatory
25 arbitration as provided in Plaintiff's and the putative class members' employment
26 contracts.

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1 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

2 Defendant alleges that its business actions or practices were not unfair,
3 unlawful, fraudulent or deceptive within the meaning of California *Business and*
4 *Professions Code* section 17200, *et seq.*

6 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

7 Defendant alleges that Plaintiff and the putative class members are barred
8 from obtaining relief pursuant to their causes of action for violation of California
9 *Business and Professions Code* section 17200, *et seq.* because California law does
10 not permit representative actions where liability can only be determined through
11 fact-intensive individualized assessments of alleged wage and hour violations.

13 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

14 Defendant alleges that Plaintiff and the putative class members are barred
15 from obtaining relief pursuant to their causes of action for violation of California
16 *Business and Professions Code* section 17200, *et seq.* to the extent Plaintiff cannot
17 act as a private attorney general.

19 **THIRTIETH AFFIRMATIVE DEFENSE**

20 Defendant alleges that this suit may not properly be maintained as a class
21 action because: (1) Plaintiff has failed to plead, and cannot establish the necessary
22 procedural elements for, class treatment; (2) a class action is not an appropriate
23 method for the fair and efficient adjudication of the claims described in the
24 Complaint; (3) individual issues predominate over any common issues of law or
25 fact; (4) Plaintiff's claims are not representative or typical of the claims of the
26 putative class; (5) Plaintiff is not a proper class representative; (6) the named
27 plaintiff and alleged putative class counsel are not adequate representatives for the
28 alleged putative class; (7) Plaintiff cannot satisfy any of the requirements for class

1 action treatment, and class action treatment is neither appropriate nor constitutional;
2 (8) there is not a well-defined community of interest in the questions of law or fact
3 affecting Plaintiff and the members of the alleged putative class; and (9) the alleged
4 putative class is not ascertainable, nor are its members identifiable.

5
6 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

7 Defendant opposes class certification and disputes the propriety of class
8 treatment. If the Court certified a class in this case over Defendant's objections,
9 then Defendant asserts the affirmative defenses set forth herein against each and
10 every member of the certified class.

11
12 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

13 Defendant alleges that the adjudication of the claims of the putative class
14 through generalized class-wide proof violates Defendant's rights to a trial by jury
15 guaranteed by the United States and California Constitutions.

16
17 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

18 Defendant alleges that the Complaint fails to properly state facts sufficient to
19 entitle Plaintiff or the putative class members to any relief including, but not limited
20 to, its failure to properly state facts sufficient to identify any actual or threatened
21 harm to them beyond pure speculation, its failure to allege facts showing that
22 Plaintiff and the putative class members have no adequate remedy at law, and its
23 proposal of relief that would impose an undue burden on both Defendant and the
24 Court and be so uncertain as to be wholly unenforceable.

25
26 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

27 Defendant alleges that the Complaint, and each cause of action in the
28 Complaint, or some of them, are barred because the Wage Orders of the Industrial

1 Welfare Commission are unconstitutionally vague and ambiguous and violate
2 Defendant's rights under the United States and California Constitutions to, among
3 other things, due process of law.

4
5 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

6 Defendant alleges that the prayer for restitution and injunctive relief is barred
7 with respect to any and all alleged violations of California *Business and Professions*
8 *Code* section 17200, *et seq.* that have discontinued, ceased, and are not likely to
9 recur.

10
11 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

12 The Complaint fails to state a claim for attorneys' fees under *Labor Code*
13 sections 218.5 and 1194, or any other basis.

14
15 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

16 Defendant alleges that the Complaint fails to properly state a claim for
17 injunctive relief.

18
19 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

20 Defendant alleges that to the extent Plaintiff and the putative class members
21 recover penalties in this action, they cannot recover punitive damages.

22
23 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

24 Defendant alleges that Plaintiff and the putative class members are not
25 entitled to equitable relief insofar as they have adequate remedies at law.

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1 **FORTIETH AFFIRMATIVE DEFENSE**

2 Defendant alleges that the Complaint fails to properly state a claim upon
3 which prejudgment interest may be awarded, as the damages claimed are not
4 sufficiently certain to allow an award of prejudgment interest.
5

6 **FORTY-FIRST AFFIRMATIVE DEFENSE**

7 Plaintiff's Complaint fails to allege special damages with requisite specificity.
8

9 **FORTY-SECOND AFFIRMATIVE DEFENSE**

10 To the extent some or all of the Plaintiffs are asserting claims that are
11 duplicative of claims they have brought in other civil actions, those claims are
12 barred.
13

14 **FORTY-THIRD AFFIRMATIVE DEFENSE**

15 Defendant is entitled to all credits and offsets from any liability found to be
16 owed to Plaintiff or putative class members allowed under California or Federal law.
17

18 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

19 Defendant alleges that Plaintiff and the putative class members lack standing
20 to bring their claims as to all or a portion of the claims alleged in the Complaint.
21

22 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

23 Defendant alleges that Plaintiff and the putative class members, insofar as
24 they are not current employees of Defendant, lack standing to bring a claim for
25 injunctive relief of any kind.

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1 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

2 Defendant alleges that venue for this action is proper in the United States
3 District Court, Central District of California and for the convenience of the parties
4 and witnesses, and in the interest of justice, venue of this action should be
5 transferred to the Central District of California pursuant to 28 U.S.C. § 1404(a).

6
7 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

8 Defendant presently has insufficient knowledge or information on which to
9 form a belief as to whether it may have additional, yet unstated, affirmative
10 defenses. Defendant reserves the right to assert additional affirmative defenses in
11 the event discovery or further investigation indicates that asserting additional
12 affirmative defenses would be warranted.

13
14 WHEREFORE, Defendant prays for judgment from this Court as follows:

- 15 1. Plaintiff's Complaint be dismissed with prejudice and judgment entered
16 in Defendant's favor;
17 2. Defendant recover its costs and expenses of litigation, including its
18 attorneys' fees from Plaintiff;
19 3. Defendant have such other and further relief as may be just and proper.

20
21 DATED: November 8, 2007

SHEA STOKES, ALC

22
23 By: 

24 Arch Y Stokes

Peter B. Maretz

25 Attorneys for Four Seasons Hotels
26 Limited, a Canadian company

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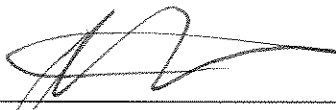
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DEMAND FOR JURY TRIAL

Defendant hereby demands trial of Plaintiff's claims by jury to the extent authorized by law.

DATED: November 8, 2007 SHEA STOKES, ALC

By: 
Arch Y Stokes
Peter B. Maretz
Attorneys for Four Seasons Hotels
Limited, a Canadian company